IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9779 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHENDRASINH DOLATSINH PANJROLIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9779 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MS MITA PANCHAL, LD.AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 11/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the District Magistrate, Bharuch on 24th January, 2003, under the exercise of powers conferred upon him under sec.3(2) of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the

PBM Act" for short) directing detention of the petitioner under the said Act on the ground that the activities of the petitioner was prejudicial to the maintenance and supplies of solvent (petroleum hydrocarbon) commodity essential to the community. The petitioner actually came to be detained on 31st May, 2003.

2. The grounds as placed on record and served upon the detenu reveal that on 23.10.2002 near Ankleshwar, a tanker bearing No.GJ-5V-4846 came to be checked by Anti Adulteration Cell of the Central Government and on informing to the Mamlatdar, Ankleshwar by Anti Adulteration Cell of the Central Government, the Mamlatdar, Ankleshwar checked the said tanker and found that the tanker was loaded by material known as "solvent". On inquiry, it was further found that the said bulk of solvent was being carried from Nandarbar (Maharashtra) to State of Haryana at Sonepat. It was also found that though invoices and bills were prepared in this respect were camouflaged and in fact the said solvent was to be delivered to the petrol pump for adulteration in petrol at Ankleshwar. The detaining authority relied upon the papers produced by the proposing authority disclosing that on an inquiry the present petitioner was the registered owner of the said tanker bearing No.GJ-5V-4846 and in collusion with one Surjitsinh @ Sandip Ramsinh Mangrola, solvent was brought from Nandarbar on camouflage invoices to Sonepat and were unloaded at Ankleshwar. Alongwith the present petitioner the said Surjitsinh @ Sandip Ramsinh came to be prosecuted on an earlier occasion for the breach of essential commodities act. The proposing authority came to the conclusion that the say of the present petitioner to have entrusted the said truck to some transporters of Nanderbar also was a camouflage to escape from the illegal activities and hence the order impugned in the petition came to be passed.

3. On behalf of the petitioner learned advocate Mr.H.R.Prajapati and on behalf of respondents No.1 to 3 learned AGP Ms.Mita Panchal and for respondent No.4 Union of India, learned Additional Standing Counsel Ms.Davawala were heard at length. The affidavit-in-reply filed by Under Secretary to the State Government is taken into consideration.

4. Various grounds contended on behalf of the petitioner and vehemently controverted by learned AGP and learned Additional Standing Counsel for the Central Government. From the rival contention raised, it appears that this matter can be decided and discussed on the

ground that whether the right of the petitioner to make effective representation under Article 22(5) of the Constitution of India is adversely affected. My attention was drawn to certain documents placed on record and served upon the petitioner. Those documents are at pages No. 1, 11, 13, 29 to 31, 49, 53 and 61 of compilation of this special civil application. It includes the documents like a letter of Anti Adulteration Cell of the Central Government written to the Mamlatdar, invoices of the goods in transit found from the driver of the truck, other documents pertains to the goods found from the truck etc. On perusal, it clearly transpires that all these documents referred to above, are either partly legible or some documents are fully illegible. It is a settled proposition of law that the documents on which the reliance is placed by the detaining authority must be supplied to the detenu as grounds of the detention. When such documents supplied to the detenu which are shown to be partly or fully illegible, undoubtedly the same would affect the right of the detenu to make effective representation against the detention order. The Division Bench of this Court in the matter of Pokhrajibhai Sohanbhai Chandel vs. District Magistrate, Surat and others as reported in 1991(2) Vol.32 GLR p.753 held that even if one copy of the documents supplied to the detenu is found illegible it would create adverse impact on making effective representation and thereby the detenu's right under Article 22(5) of the Constitution of India will be affected. Having taken this aspect into consideration, it appears that the order impugned in this petition is required to be quashed and set aside on this ground alone.

5. In the result, this special civil application is allowed. The order impugned in this special civil application passed on 24th January, 2003, by the District Magistrate, Bharuch, in exercise of powers conferred upon him under sec.3(2) of the PBM Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. Vora, J.)

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